

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

**IN RE: DIGITEK PRODUCT LIABILITY
LITIGATION**

MDL NO. 1968

THIS DOCUMENT RELATES TO ALL CASES

**DEFENDANTS' BRIEF IN OPPOSITION TO
PLAINTIFFS' MOTION TO EXTEND DEADLINES IN PTO #16**

Defendants oppose Plaintiffs' motion to extend the deadlines set forth in PTO #16 for class certification motions and briefing. The sole basis for Plaintiffs' motion on this issue is that Defendants have not completed document production. Plaintiffs state: "Such documents would include internal investigatory documents, correspondence, memorandums, emails, and relevant individual's custodial files." This does not justify an extension of the PTO #16 deadlines for class certification motions and briefing because the documents that Defendants will be producing do not relate to Plaintiffs' burden in certifying an economic class. Simply put, whether there are questions of law or fact common to the class, or whether the claims of the named class representatives are typical of those of the class, are not questions that will be answered by company records regarding the manufacture of Digitek[®] or individual custodial files. The parties are not at the merits stage of the class action litigation, and this is a manufacturing defect case, not one of design defect. The inquiries for class certification are either in the hands of Plaintiffs themselves or existing, available information, not the internal documents about manufacturing the product. This is addressed in the Defendants' brief opposing the Motion to Compel.

Though Plaintiffs have not requested an extension of the class certification motions and briefing deadlines based on the current discovery dispute regarding Defendants' responses to

class discovery, Defendants expressly incorporate their briefs opposing Plaintiffs' Motion to Compel on that issue.

In sum, an extension of the PTO #16 deadlines for class certification motions and briefing – until 30-45 days after the final production of documents from the Defendants – is not warranted, and should be denied.

Respectfully submitted,

ALLEN GUTHRIE & THOMAS,
PLLC

Rebecca A. Betts, LIAISON
COUNSEL
500 Lee Street East, Suite 800
Charleston, West Virginia 25301
Tel: (304) 345-7250
Fax: (304) 345-9941
E-mail: rabetts@agmtlaw.com

Attorney for Defendants

SHOOK, HARDY & BACON LLP

Harvey L. Kaplan, CO-LEAD
COUNSEL
Madeleine M. McDonough, CO-
LEAD COUNSEL
2555 Grand Blvd.
Kansas City, Missouri 64108-2613
Tel: (816) 559-2214
Fax: (816) 421-5547
E-mail: hkaplan@shb.com
E-mail: mmcdonough@shb.com

*Attorneys for Mylan Pharmaceuticals
Inc., Mylan Bertek Pharmaceuticals
Inc., and UDL Laboratories, Inc.*

TUCKER ELLIS & WEST LLP

By: s/Richard A. Dean

Richard A. Dean, CO-LEAD COUNSEL
Matthew P. Moriarty, CO-LEAD
COUNSEL

Kristen L. Mayer
925 Euclid Avenue, Suite 1150
Cleveland, Oh 44115-1414

Tel: (216) 592-5000

Fax: (216) 592-5009

E-mail: richard.dean@tuckerellis.com
matthew.moriarty@tuckerellis.com
kristen.mayer@tuckerellis.com

*Attorneys for Defendants Actavis Totowa
LLC, Actavis Inc., and Actavis Elizabeth
LLC*

CERTIFICATE OF SERVICE

I hereby certify that, on October 8, 2009, a copy of the foregoing **Defendants' Brief in Opposition to Plaintiffs' Motion to Extend Deadlines in PTO #16** was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Respectfully submitted,

ALLEN GUTHRIE & THOMAS,
PLLC

Rebecca A. Betts, LIAISON
COUNSEL
500 Lee Street East, Suite 800
Charleston, West Virginia 25301
Tel: (304) 345-7250
Fax: (304) 345-9941
E-mail: rabetts@agmtlaw.com

Attorney for Defendants

SHOOK, HARDY & BACON LLP

Harvey L. Kaplan, CO-LEAD
COUNSEL
Madeleine M. McDonough, CO-
LEAD COUNSEL
2555 Grand Blvd.
Kansas City, Missouri 64108-2613
Tel: (816) 559-2214
Fax: (816) 421-5547
E-mail: hkaplan@shb.com
E-mail: mmcdonough@shb.com

*Attorneys for Mylan Pharmaceuticals
Inc., Mylan Bertek Pharmaceuticals
Inc., and UDL Laboratories, Inc.*

TUCKER ELLIS & WEST LLP

By: s/Richard A. Dean

Richard A. Dean, CO-LEAD COUNSEL
Matthew P. Moriarty, CO-LEAD
COUNSEL

Kristen L. Mayer
925 Euclid Avenue, Suite 1150
Cleveland, Oh 44115-1414

Tel: (216) 592-5000
Fax: (216) 592-5009

E-mail: richard.dean@tuckerellis.com
matthew.moriarty@tuckerellis.com
kristen.mayer@tuckerellis.com

*Attorneys for Defendants Actavis Totowa
LLC, Actavis Inc., and Actavis Elizabeth
LLC*